



1301 Avenue of the Americas, 40th Floor
New York, NY 10019-6022

PHONE 212.999.5800

FAX 212.999.5899

www.wsgr.com

January 18, 2017

VIA ECF

The Honorable Dora L. Irizarry
Chief Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Mark Nordlicht, No. 1:16-cr-640-DLI

Dear Chief Judge Irizarry:

We write on behalf of six of the seven defendants¹ concerning the government's *ex parte*, sealed Reassignment Letter (Dkt. No. 1 at Attachment 3) (the "Letter"). For the reasons set forth below, we respectfully request that Your Honor Order that: (1) the Reassignment Letter be unsealed and publicly filed and (2) the government identify *all* existing "related cases" to the matter at hand, to the extent such information is not included in the Letter.

By way of background, on December 14, 2016, the government filed an eight-count indictment under seal against the defendants charging various counts of securities fraud, wire fraud and conspiracy to commit the same. *See* Dkt. No. 1. According to the public docket, that same day, the government also filed, as an attachment to the indictment, a sealed, *ex parte* "Reassignment Letter." *Id.* On December 19, 2016, the defendants were arrested and the government moved to unseal the indictment, but not the Reassignment Letter. The indictment reflects that this case was originally assigned to Judge Allyne R. Ross; however, in advance of the arraignment proceeding the government informed the parties that the case had been reassigned to Your Honor.

Counsel for several defendants have subsequently asked the government to provide the defense with a copy of the Letter. The government has refused these requests, stating only that in its view the reason for keeping this information from the defendants still applies. Having received no information from the government, we can only assume that the case was reassigned because it was deemed to be "related" to another case pending before Your Honor.

Local Rule 50.3.2 of the United States District Court for the Eastern District of New York ("Rule 50.3.2") governs the assignment of related criminal cases in this district. While Rule 50.3.2

¹ Defendant Uri Landesman does not join this application.



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permits the government to file its related case notice *ex parte* and under seal, it expressly provides that that government “shall promptly move to unseal the notice once the need for *ex parte* and sealed filing no longer exists.” Rule 50.3.2(c)(2). Now that the indictment has been unsealed and the defendants arrested, it is difficult to understand any continuing reason to withhold the Letter. Indeed, to the extent that the government is concerned about the defendants learning the identities of cooperating witnesses at this early stage, those concerns may be wholly addressed by redacting the names and other identifying information or, alternatively, by producing the letter on an “attorneys’ eyes only” basis. Defense counsel seeks only to evaluate the adequacy of the submission made to the Court and the basis for reassignment.

This is not the first time these issues have been raised before the Court. For example, in *United States v. Simels, et al.*, Your Honor ruled, under a predecessor to Rule 50.3.2, that the government’s failure to share the relation letter with defense counsel and failure to electronically file that letter, rendered it an improper *ex parte* communication. *See* Case No. 1:08-cr-00640-DLI, Text-Only Entry Order dated September 26, 2008.

Thank you for your consideration.

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

s/ Morris J. Fodeman
Morris J. Fodeman

Cc: AUSA Alicyn L. Cooley (via ECF/email)
AUSA Lauren Howard Elbert (via ECF/email)
AUSA Sarah Evans (via ECF/email)
AUSA Winston M. Paes (via ECF/email)

Defense Counsel of Record (via ECF/email)